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10/619,891	07/15/2003	Vincent De Laforcade	NONY 3.0-004	7321
530                      7590                      08/17/2006 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER DOAN, ROBYN KIEU	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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## **DETAILED ACTION**

Applicant's Amendment filed 5/25/06 has been entered and carefully considered. Claims 48-55, 57-58, 86, 87, 89, 91, 93 and 95 have been amended. Claims 56, 59, 88, 90 and 96 have been canceled. Limitations of amended claims have not been found to be patentable over newly discovered prior art, therefore, claims 48-55, 57-58, 60-87, 89, 91, 92-95 are rejected under the new grounds rejections as set forth below.

### ***Claim Objections***

Claim 85 is objected to because of the following informalities: claim 85 depends on itself; for the purpose of examination, claim 85 will be treated to depend on claim 84. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 48-50, 52, 58, 63, 64, 69, 76, 77, 79-84, 89, 91-95 are rejected under 35 U.S.C. 102(e) as being anticipated by Ogino et al (U.S. Pat. # 6,270,277).

With regard to claims 48, 52 and 89, Ogino et al discloses a cosmetic receptacle (fig. 1) comprising a body (1) containing a cosmetic (col. 1, line 8), a neck (fig. 6 see attachment A) attached to the body, the neck comprising a first portion (see attachment A) having a first inside diameter (see fig. 6) and a first fixing means (10a) with thread, a second portion (see attachment A) located between the body and the first portion and having a second inside diameter (fig. 6) which is greater than the first diameter, the second portion further having a second fixing means (10) with thread, wherein the first and second threads inherently enabling screwing fastening in the same direction. In regard to claims 49, 50, Ogino et al shows the neck having a shoulder (see attachment B) with a plane annular surface extending outside the neck, the shoulder being perpendicular to the neck (see attachment B). In regard to claims 58 and 63, 77, Ogino et al discloses at least one accessory (3) having an applicator (4) configured for removably fixing onto the neck by fastening only on the fixing means. In regard to claims 64 and 69, Ogino et al shows the applicator having teeth (5, it is noted that filaments 5 are considered as teeth) and the applicator also having a row of teeth (fig. 2) which includes a pair of end teeth, the end teeth having no dispenser orifices. In regard to claim 76, Ogino et al shows the applicator being made by molding (col. 7, lines 62-67). In regard to claims 79, 80, 81-84 and 91-95, Ogino et al discloses at least two accessories (2, 3), a first one including a cap (2) and a second one including an applicator (3) and wherein the two accessories each incorporating with the first and

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second portions of the neck. Ogino et al also shows the receptacle being filled with cosmetic (col. 1, line 8).

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 86 is rejected under 35 U.S.C. 102(b) as being anticipated by Schultz et al (IDS cited reference U.S. Pat. # 3,106,742).

With regard to claim 86, Schultz discloses an applicator (fig. 3) having fixing means (where portion 25 of the neck fastens to), the applicator having an assembly skirt (29) having a free end (at 51) and an annular bead (49) displaced from the free end and on an inside surface of the assembly skirt, wherein the fixing means being situated between the free end and the annular bead (fig. 3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 87 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schultz et al.

With regard to claim 87, Schultz et al discloses an applicator comprising all the claimed limitations in claim 86 as discussed above except for screw means for screw fastening the applicator on the neck of the applicator. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the screw means as a matter of design choice as an alternative way to secure the applicator into the neck of the receptacle.

Claim 85 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ogino et al.

With regard to claim 85, Ogino et al discloses an applicator comprising all the claimed limitations in claim 84 as discussed above except for the cosmetic having a substance for coloring the hair. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the substance for coloring hair as a matter of design choice since such modification is well known in the art.

Claims 48, 49, 50, 51, 55, 57, 58, 60, 79-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsh (U.S. Pat. # 3,121,906) in view of Ogino et al.

With regard to claims 48, 51 and 58, Hulsch discloses a kit (fig. 4) comprising a receptacle (11) having a body (10), a neck (12) having an opening (17) into the body, the neck having a first portion (15) having a first inside diameter (see fig. 2) and a first fixing means (16), a second portion locating between the body and the first portion having a second inside diameter (fig. 3) and a second thread (13), wherein the second

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diameter being greater than the first diameter, at least one accessory (20) configured for removably fixing onto the neck of the receptacle by fastening only on the first fixing means. Hulsch fails to show the cosmetic inside of the body of the receptacle, however, Ogino et al discloses a similar type of receptacle as Hulsch, the receptacle of Ogino et al can contain cosmetic (col. 1, lines 5-8). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the cosmetic as taught by Ogino et al into the Hulsch receptacle for the purpose enhancing beauty to the user. In regard to claims 49, 50 and 57, Hulsch shows the neck having a shoulder (14) with a plane annular surface extending outside the neck, the shoulder being perpendicular to the neck and having an inside surface that connects the first portion and the second portion. In regard to claim 55, Hulsch shows the receptacle being made of plastic (col. 4, lines 6-7). In regard to claim 60, Hulsch also shows the neck having a shoulder (14) connecting the first portion to the second portion and the accessory having an assembly skirt (31) which cooperates with the second portion, the assembly skirt including a sealing surface (33) that abuts the shoulder when fixed to the neck. In regard to claim 63, Hulsch shows the accessory having an applicator (38). In regard to claims 79-84, Hulsch discloses at least two accessories (20, 30), a first one including a cap (20) and a second one including an applicator (30) and wherein the two accessories each incorporating with the first and second portions of the neck.



Claims 53, 54 and 61, 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Ogino et al as applied to claims 48 and 58 above, and further in view of Adams et al '763.

With regard to claims 53, 54 and 61, 78, Hulsch in view of Ogino et al discloses a cosmetic receptacle comprising all the claimed limitations in claims 48 and 58 as discussed above except for the second fixing means having one snap fastening member which includes an annular bead. Adams et al discloses a receptacle (fig. 2) comprising a cap (21) having an assembly skirt (33) having a sealing surface which includes an annular bead (31). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the assembly skirt of Hulsch in view of Ogino et al with the sealing surface including an annular bead as taught by Adams et al as a known way of solving the problem of sealing the neck portion of the receptacle (col. 3, lines 60-62). It would also have been an obvious matter of design choice to construct the second fixing means having one snap fastening member, since such modification is well known in the art.

Claims 64-68, 70-72, 74 and 75 rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Ogino et al as applied to claim 58 above, and further in view of Elmer et al (U.S. Pat. # 6,457,476).

With regard to claims 64-68, Hulsch in view of Ogino et al discloses a kit comprising all the claimed limitations in claims 58, as discussed above except for the applicator including teeth and at least one of the teeth having at least one dispenser



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orifice being displaced from the free end of the one of said teeth, at least one dispenser orifice substantially limits a cosmetic to be dispensed from dispensing other than between the teeth. As to claims 70-72 and 74-75, Hulsch in view of Ogino et al also fail to show at least one row of teeth having a pair of end teeth having orifices which faces others of the at least one row of teeth, at least one tooth located between the pair of end teeth having a plurality of orifices on the exterior of the one tooth, the plurality of orifices being located on opposite sides of the one tooth and the applicator having at least six teeth, each including an orifice. Elmer et al discloses an applicator (20, figs. 2, 7) comprising one row of at least six teeth (fig. 2) being the same length, each tooth includes at least one orifice (62) being displaced from the free end of the tooth; Elmer et al also shows a pair of end teeth (fig. 2) having orifices (62, 68) which faces others of the at least one row of teeth (fig. 7), at least one tooth (50) located between the pair of end teeth having a plurality of orifices (62, 68, fig. 7) on the exterior of the one tooth, the plurality of orifices being located on opposite sides of the one tooth (fig. 7). Elmer et al inherently shows at least one dispenser orifice (62, 68) substantially limits a cosmetic to be dispensed from dispensing other than between the teeth. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Elmer et al as discussed above into the applicator of Hulsch in view of Ogino et al in order to effectively deliver the liquid to the hair of the user.

Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Ogino in view of Kirschenbaum (U. S. Pat. # 2,270,529).

With regard to claims 65 and 73, Hulsch in view of Ogino discloses a kit comprising all the claimed limitations in claims 58, as discussed above except for at least one tooth having a groove extending from a free end of the tooth to the at least one orifice. Kirschenbaum discloses a comb applicator (fig. 3) comprising at least one tooth (76) having at least one dispenser orifice (79) being displaced from the free end of the one of said teeth and at least one tooth having a groove (80) extending from a free end (78) of the tooth to the at least one orifice. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Kirschenbaum as discussed above into the applicator of Hulsch in view of Ogino in order to retard to rapid flow of the liquid down to the teeth.

### ***Conclusion***

Applicant's arguments with respect to claims 48, 58, 86, 89, 91 and 93 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

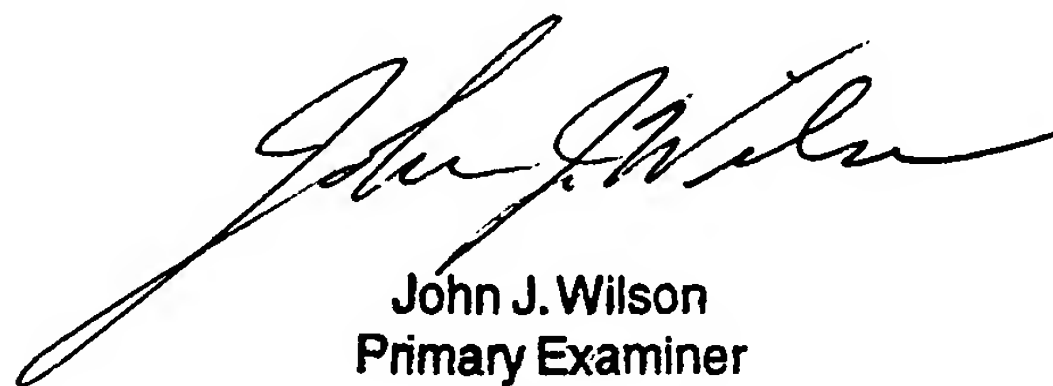
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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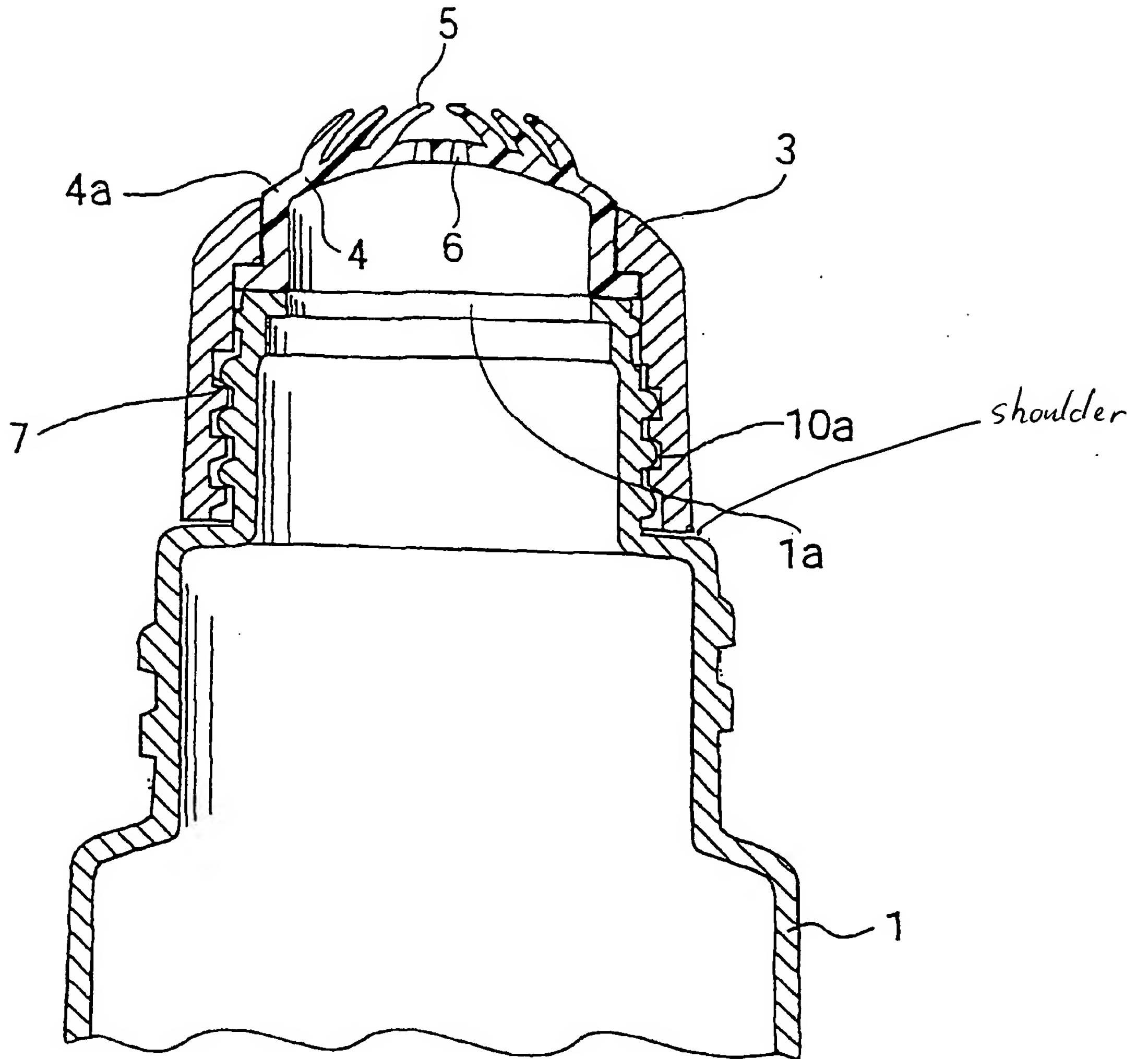
Robyn Doan  
Examiner  
Art Unit 3732



John J. Wilson  
Primary Examiner

Attachment B

Fig. 8 B



Attachment A

Fig. 6

